THE Ancient Legal Course AND Fundamental Constitution OF THE *PALACE-COURT* OR *MARSHALSEA.*

Together with the several *Charges* of all *Proceedings* there; And its present Establishment: Particularly set forth and Explained.

Whereby it will appear of what great *Authority* this *Court* hath been in all Times.

London, Printed for *Robert Crofts* at the *Crown* in *Chancery-lane*. 1663.

To the Reader.

IN order to a *satisfactory account of this Court and of this endevour in this Treatise, to shew the nature of its Jurisdiction, its method of Proceeding, and the* Clients (*both* Paintiffes *and* Defendants) *Charge therein, it will be requisite, though in a preposterous*

way, first to show the annihilation or nulling of it in late Times of the Usurpation, *and the beginning of its* constitution, *and the* reason *thereof.*

Indeed, that Disauthorizing By-blow *of the* Independent Anarchy, *might very well be* forgotten *here, were it not that the* injurious continuance *of that* Illegal Sup-

Suppreſſion, *had almoſt defaced the* Memory *and* Record *thereof, and the ruine of this* Judicature *changed into and become its* crime; *which was imputed to be its* chargeableneſs, uſeleſneſs, dilatorineſs *and* vexation; *whereas indeed it was guilty of* none of thoſe, *nay of nothing leſs.*

All the fault was, this Court *was one of the neereſt*

neereſt *Appendixes of the prerogative of the Crown; and if continued in its primitive uſe, would be a* remain *and* relique *of* Monarchy *and* Majeſty, *which they could by no means endure ſhould be in the eyes of the* People; *which for the* accommodateneſs *and* benefit *of its* Jurisdiction, *did ſeek for ſpeedy redreſſe from thence rather than* elſe-

elsewhere. They likewise enviously knew, that this Court *was a standing* Monument *of that* respect *and* reverence *all* Parliaments *and the* Laws *have throughout all Times had for the* King, *allowing His* Court *the circuit and compass which is now called the* Verge *of* Twelve Miles round about it; *so that in effect there is no* Potentate *or* Prince

Prince in the World can shew a Palace of such an extent, nor can any the most magnificent Seraglio compare with it; as my Lord Bacon hath most elegantly observed in his Charge to the Grand Jury of this Court.

Nor did they take care alone for the outward State and Splendour of the Kings Palace in these dimensions, but for the inward

inward Honour and Glory thereof, by preserving it as much as was possible, free from disorder and all manner of Enormity, by erecting this Judicature, appointing and giving extraordinary power and authority to the Steward of the Kings Houshold, the principal Judge here, to determine all manner of Causes criminal, judicial

dicial or capital arising within the Verge; and that they strengthned and backed with several laws as you will perceive in the ensuing Treatise; which said power is now again happily returned into the same channel. And so much may suffice to be spoke of its Original Institution.

As to the Practice, the Disuse thereof having made

made it something difficult, and the charge of Suits there suspectful of innovation, I have given an accompt of the several Rates thereof, that by a due compare it may appear they are the same as ever: and also to let the Reader see the easinesse of them beyond the charge of other Courts; its dispatch and present ending of all Suits; and that

that finally in Authority
is as Authentick and
as Soveraign as any other,
in being a kind of peculiar
Kings-Bench.

Both the Name, Na-
ture, *and Proceedings*
thereof, are fully declared
in the ensuing Tract, to
your Perusal and Accep-
tance whereof we com-
mend it.

Valen

THE PALACE-COURT.

IT is requiſite firſt, that the Nature of this *Court* be underſtood, and that more eſpecially, becauſe the

A late

late *Usurpation* had endevoured to race out and obliterate the *Jurisdiction* thereof, meerly for being consistent and sured to the *English* Laws, and more especially to the *Kings Person*, His *Court*, and His *Royalties*, the soul and intrinsick matter of *Government*.

First,

First, of the Antiquity thereof.

FOr the *Antiquity* of this *Court*, it is as ancient as any other of the *Kings Courts*, if not ancienter: *Curia sequitur Regem*, The Court followeth the KING; and it is therefore peculiarly called the *Palace Court*, referring to

the KINGS residence; and this *Court* doth more especially concern Him, as appears by the *Statute* of 4 *H.* 6. 8. directing us to the *Statute* of the Twenty eighth of *Edward* the First, *Articuli super Chartas*; wherein several Provisions were made for the advantage thereof. No doubt it is of as long stan-

Coke cap. 18. Jurisdiction of Courts.

ſtanding as the *Monarchy* of ENGLAND. *Fleth* ſaith it is next to the *High Court of Parliament.*

The Marſhal *and* Marſhalſea, *whence ſo called.*

FOr it will appeare by the terme and name of this *Court*, that

it was of the ſame neer beginning with the *Britiſh* Soveraignty: For as to the derivation of the terms *Mareſchallus* and *Mareſcalcia*, they are *Saxon* words, which nevertheleſs tend much to the proof of the *Antiquity* and *Honour* of our *Nation*, ſeeing other *Nations* have the ſame Offices and Officers; ſo that in reſpect the name

name is derived from our *Language*, as that of our Anceſtours, it is apparent other *Nations* took the ſame from us.

My Lord Juſtice *Coke* ſaith further, That this *Court* hath its *Foundation* from the *Common Law*, and the *Juriſdiction* thereof is original and ordinary.

The Jurisdiction and authority of this Court, and first of its Name.

ALbeit in this *Court* the *Steward* and *Marshall* are *Judges*, and the *Steward* hath the precedency, yet the *Court* is called the *Marshalsea* for three causes.

First, the *Marshall* is not onely a *Judge*, but seeth

seeth *that Execution, which is the Life of the Law*, be done.

Secondly, his Office is in force both in time of *War* and *Peace*.

Though the *Constable* of *England* be the chief *Nobleman* (which from the Family of the *Bohuns* Earls of *Hereford*, descended by Inheritance upon the Person of *Edward* Duke of

Buckingham, Attainted the *thirteenth* Year of *Henry* the *Eighth*, in whom that too masterly an Honour fell) and hath the precedency in other places, of the *Marshal* of *England*, yet notwith-standing though their Power and Authority were so untempered, yet the *Marshal-sea* carried it through the *Current* of the *Laws*. *The*

The Authority of the Court.

THe Authority of this *Court* was larger formerly then now, according to the *Prerogative* of our former *Princes*, but in the *Twenty Eighth* year of that noble Prince *Edw.* the *First*, by an *Act* intituled *Articuli super Chartas*

Chartas, the Juriſdiction was limited and divided into three Qualifications;

Firſt, to determine all *Covenants*, *Contracts*, and *Treſpaſſes*, wherein both *Plaintiff* and *Defendant* were of the Kings Houſhold.

Secondly, all *Contracts* and *Covenants*, which ſhould ariſe in *Controverſie*, if either of the

the Parties were of the ſaid Houſhold.

Thirdly, for all manner of *Treſpaſſes* and *Perſonal Actions* ariſing within the Verge of the *Kings* Houſhold.

Several Variations have been made by Acts of PARLIAMENT ſince, but now the Eſtabliſhment is as followeth;

This

This Court is kept every *Friday* in the *Court-house* on St. *Margarets hill* in *Southwark*, and may be held in any other fit place within 12. Miles of *White-hall*.

The Judges, are, the Lord Stewards of the Kings Houſe, and the Knight Marſhal for the time being, and the Steward of the Court or his Deputy.

The

The proceedings in this Court is by Capias or Attachment, which is to be ſerved upon the Defendant, by one of the Knight Marſhalls men, who taketh Bond with ſuch Sureties for the Defendants appearance at the next Court as he will anſwer for, at his perill, the Bayle are to be ſufficient Houſekeepers within the Juriſdiction

risdiction of the Court, sufficient to the Action.

And these Processes are to be had at the Office of the same *Court*, appointed by the *Steward*, which every Minister of the Court or Marshalls-man can direct you to.

The Defendant upon his appearance must put in two sufficient House keepers, living within

within the Jurisdiction of the Court, to pay the Condemnation in Court, which if he neglect to do, the Plaintiffe may have the Bond taken for his appearance Assigned over to his use, and so Arrest the Defendant and his Sureties.

The next Court after the Bayle taken and accepted of by the Plain-

Plaintiffe, the Plaintiffe ought to declare and ſet forth the cauſe of his Action, and if he do not declare the Defendant may have an Execution againſt him for his coſts and charges, but if the Plaintiffe do declare againſt him then they go on to Iſſue and Try all by a Jury, who live within the Juriſdiction of the Court, according

according to the course of the Common-Law.

In foure or five Court days, commonly all your Actions come to Tryal, so the proceedings of this Court are very quick and speedy, and at small Charges.

The Actions tryed there, are of Debt, Trespasse, Battery, Slander, *Trover*, and all other Actions

Actions personal whatsoever.

The Fees of this Court I have here set down as they are inserted in the *Letters Patents.*

The ordinary Fees of the Pallace Court of *Westminster*, to be paid by the *Plaintiff.*

Imprimis,

IMprimis, for every *Writ* or *Precept* of *Capias* or *Attachment* to the *Steward* and *Marshal*, *One Shilling.*

To the *Prothonotary* for *Writing* the *Writ*, *Two Pence.*

To the *Marshalls man* for *executing* or *serving* it, *One Shilling Four pence.*

The *Attorneys* Fee upon every *Declaration*

tion, *Issue*, *Venire Facias*, and *Habeas corpora Juratorum*. One Shilling Eight pence.

For the *Warrant* of *Attorney* to the *Prothonotary*. *Four Pence.*

For making of every *Declaration*, and *Entry* thereof to the *Prothonotaries* Clerks, *One Shilling.*

For the Fee of the Court upon every *Declaration*,

claration, *Issue*, and *knowledge* of *Satisfaction* to the *Steward* and *Marshall*, *One Shilling four pence.*

For the marking and Filing of every *Declaration*, and *Entry* of every *Satisfaction* to the *Prothonotary*, *eight pence*

To the *Prothonotary* for *entring* of every *Issue*, and every *Verdict* and *Judgement*, *One shilling.*

The

The *Cryers Fee* upon every *Issue*, *Four pence*.

For every *Writ* of *Venire facias*, *Habeas corpora*, *distringas Juratores*; and for every other Writ of *Execution* and others, *One shilling* and *eight pence*.

To the *Prothonotary* for writing of every of them, *Four pence*.

For the *Return* of every one of them to the

Prothono-

Prothonotary, *One shilling.*

To the *Marshalls* Man for executing every *Venire facias*, *Two shillings.*

For the executing of the *Habeas Corpora*, and *distringas Juratores*, to the *Marshalls* man, *One shilling* and *six pence.*

To the Cryer for warning of the *Jury*, *Six pence.*

For every Verdict and Judgement thereupon, to the *Steward* and *Knight Marshall*, *Three shillings* and *Four pence.*

To the *Prothonotary* for entring every Bail, *Five pence.*

To the Keeper of the Prison thereupon, *A Penny.*

For the Attourneys Fee upon every Bill of *Issue*,

Issue, *Venire facias*, and *Habeas Corpora Juratorum*, *One shilling* and *eight pence*.

For the Copy of every *Declaration* to the *Prothonotary*, *One shilling*.

For every Issue on the *Defendants* part, to the *Steward* and *Marshall*, *One shilling* and *Four pence*.

For every Warrant of Attourney for the Defendant, thereupon to the *Prothonotary*, *Four pence.*

Accidental Fees.

FOr every Rule of Court to the *Prothonotary*, *Four pence.*

For the Drawing of every

every *Declaration, Plea, Rejoynder, Sur-rejoynder, Moratur in Lege*, for every Sheet to the *Prothonotaries* Clerk, *Four pence.*

For the Inrolment thereof, to the *Prothonotary* for every Sheet, *Eight pence.*

For every Writ of *Subpena* to the *Steward* and *Marshall*, *Two shillings.*

For the writing thereof, and of every *decem tales*, and of every *Retraxit* to the *Prothonotary*, *Six pence.*

For the allowing of every Writ of *Procedendo*, to the *Steward* and *Marshall*, *One shilling* and *eight pence.*

For the Entry thereof, and of every Continuation; and for the Assigning of an Obligation

gation for Appearance on Record to the *Prothonotary*, *Eight pence.*

To the *Marshalls* man for keeping the *Jury*, *One shilling.*

To the *Hall-keeper*, *One shilling.*

To every Councellor at Law for his Fee, *Five shillings.*

To the Cryer for Proclamation of every Jury, *Six pence.*

To the Attourneys Clerk for every Bill of Costs, *Eight pence.*

For ordinary Fees to be paid by the Defendant.

FOR the Knight-Marshalls Fee upon every Arrest, *Three shillings* and *Six pence.*

To the *Prothonotary* thereupon

thereupon, *Ten pence.*

To the Keeper of the Prison thereupon, *Four pence.*

To the Turn-key thereupon, *Four pence.*

For every Bail in Court, and every Bill to the *Steward* and *Knight Marshall*, *One shilling* and *Four pence.*

For executing every Writ of *Scire facias*, to the Cryer, *One shilling.*

For the Copy of every Record, to the *Prothonotary* for every Sheet thereof, *Four pence.*

To the Cryer for every *non pros, four pence.*

For every *Venire facias*, *Habeas corpora*, or *Distringas Juratores per proviso*, to the *Steward* and *Knight Marshall*, *One shilling* and *Eight pence.*

For

For writing thereof to the Prothonotary, *Four pence.*

For executing thereof, to the *Cryer*, *Two Shillings.*

For the Return thereof to the Prothonotary, *One ſhilling.*

For the keeping the Jurors thereof, to the Cryer, *One ſhilling.*

For every *Non pros*, and every Allowance of

of *Habeas Corpus*, *Writ of priviledge*, *Superſedeas*, and every other ſuch like Writ, to the Steward and Marſhall, *One ſhilling* and *Eight pence.*

For the Entry of every one of them, on Record, to the Prothonotary, *Eight pence.*

For the Return of every ſuch Writ to the Steward and Marſhall, *One*

One shilling and *Four pence.*

For writing the Return thereof, for every Action to the Prothonotary, *One shilling.*

For the Allowance of every Writ of Error, to the *Steward* and *Marshall, One pound.*

For the Prothonotary for Entry thereof, *Two shillings.*

For

For every Writ of Superſedeas, *Two ſhillings* and *Six pence.*

For Certifying of Records to the Prothonotary for the writing of every Roll of Parchment thereof, *Six ſhillings* and *eight pence.*

For Correction of every Priſoner, in Execution, to the Keeper of the Priſon, *One ſhilling* and *Six pence.*

For

For the Prothonotaries Clerk's Fee thereupon, *One ſhilling* and *Six pence.*

To the *Turnkey* thereupon, *One ſhilling Four pence.*

For the Prothonotaries *Clerks Fee* for the Entry of the *Cauſe* of Suit, and Releaſe of every Priſoner, *Four pence.*

Upon

Upon every Obligation of Appearance of the Prisoner to the said *Clerk*, *Six pence.*

HAving thus set down the *Fees* of this *Court*, that all *Clients* may know their certain charge without the

the trouble or danger of Exaction, and to ſhow the reaſonableneſſe and eaſie Rates thereof to what is uſed in other *Courts*, it will not be amiſſe after this *litigant* part of this *Court* is thus deſcribed, to ſpeak a little of its Juriſdiction by way of Indictment, and reference to to the Peace.

You

You may know therefore, as the Learned Lord *Bacon* saith in his *Charge* given to the *Verge*, that these foure things are cognizable and Inquirable in this *Court*, as well as in any other of the Kings *Courts* at *Westminster* or else, for all Matters and Trespasses committed within the circuit of the *Verge*

First,

First, All manner of Offences againſt *God* and the *Church*, contrary to the Statutes made againſt them, as *Sacrilege*, *Blaſphemy*, *Recuſancy*, *Separation*, and the like.

Secondly, All manner of Offences againſt the *King* and the *State*, (more particularly the Perſon of the King) as *Treaſons*, *Conſpiracies*, *Riots*,

Riots, *Tumults*, and other leſſer Offences of the ſame kind and nature, and Generally whatever diſturbs the *Publick Peace*.

Thirdly, All manner of Offences that are capital, and reach to the Life of the Offender.

Fourthly, All manner of Offences not capital, extending to *Fines*, *Im-*

Imprisonment, and Loss of Limbs, Pillory and *Whipping.*

All these particulars were usually heard and determined at Set times in the Yeer, by the Lord Steward himselfe in person, but of late by *Commission*, which as it hath taken something from the Honour, so hath it added to the Strength and Executi-

on

on of its Authority; ſo that you may ſee, as hath been ſaid, that this *Court* hath always been had in great veneration and reſpect.

It remains that ſomething ſhould be ſaid touching *Attatchments*, *Sequeſtrings*, *Diſtreſſes*. *Replevins*, &c. as likewiſe of *Wagers of Law*, *Demurrers*, and other ſuch Legal Defences; and

and the Method and way of Proceeding in this *Court* in ſuch *Caſes*; but becauſe there is little variation here, from other *Courts* in the ſame Matters, ſave a due diſproportion in *Fees*, not very conſiderable; and becauſe the practice is more frequent in *Corporation-Courts* than *here* they are omitted in this little *Treatiſe*, which is intend-

intended for no prolix *Repetition* of that which every person is supposed to have some understanding in, or may easily attain it by former Directions.

Thus have I concluded the Account of this most Ancient and most Honourable *Court*, having been the larger in deducing its Jurisdiction, because of the pecu-

liarity

ry meane conceit and eſtimation people generally have had thereof, (though its Decrees are as valid and binding as of any of the Benches of Law at *Weſtminſter*) deſiring the Reader to accept of this Endeavour in good part, and wherein it is not fully ſatisfactory, to help it by his own obſervance, which a ſmall practice

or Suit will enable him to make therein. But before I have done, you must note, that as to Juries and Jurors this Court is not limited to Freeholders, but may be ſerved by any ſufficient Inhabitants within the Verge; which alſo is not limited and confined in this or any other Reſidence of the Kings perſon, which alone

alone makes the place he ſtays at a Court; but whereever it ſhall happen for pleaſure, convenience, or other cauſes, as Sickneſſe, Infection, and the like, this Jurisdiction followeth His abode, and may be executed in as full & ample manner within any 12 Miles of His abode and habitation; though for the Honour

of the Kings ancient Manſion, neer this His Imperial Chamber, the Cities of *London* and *Weſtminſter*, in all removes of the King and His Court, the Law proceeds here, and Trials are had, and Judgement and Execution as of courſe, and as uſed before.

But there muſt be a ſpecial care uſed by the Mar-

Marſhals men and other his Officers, that *they paſſe not the* Verge in doing or executing any Proceſs or Judgement; for there is a Statute to the contrary, made upon complaint of the exorbitant actings and unwarrantable proceedings in former times: And as 'tis a Maxime and chief Sanction of the Law, that

the King can do no wrong, ſo eſpecial care is to be had in the adminiſtration of this Judicature, that His Subjects *receive* none, being ſo neerly under his eye and protection, and his Court ſuppoſed by the Law to be a ſanctuary and ſhelter from all injuſtice and oppreſſion: So that there is no fear of injury and Fraud in this

this Court; in regard the King is in some sort more personally present here than in other his Judicatures.

I thought to have added the Names of the distinct Offices and Officers belonging to this Court for further satisfaction, but I must not swell the Book, which hath exceeded its first designement.

FINIS. Exam.

this Court, in regard
the King is in some fort
more particularly present
here than in other his
Public Courts.

I thought to have ad-
ded the Names of the
Visiting Officers and Of-
ficers belonging to this
Court for further Satis-
faction, but I must not
swell the Book, which
hath exceeded its firſt
Defign.

FINIS.